

NAFR

HIGH COURT OF CHHATTISGARH, BILASPURREVP No. 28 of 2019

1. Rajesh Agrawal S/o Late Shri G.S. Agrawal Aged About 50 Years R/o Sub Divisional Officer (Electrical & Mechanical) Light Machinery Tube Well & Gate, Sub Division No.1, Water Resources Department Raipur, Chhattisgarh.

---- Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, Water Resources Department, Govt. of C.G., Mahanadi Bhawan, Naya Raipur, Raipur, Chhattisgarh
2. Secretary, Water Resources Department, Govt. of C.G., Mahanadi Bhawan, Naya Raipur, Raipur, Chhattisgarh
3. Engineer-in-Chief, Water Resources Department, Mantralaya, Mahanadi Bhawan, Naya Raipur, Raipur, Chhattisgarh
4. Chhattisgarh Public Service Commission, through Chairman, Shankar Nagar Road, Bhagat Singh Square, Raipur, District Raipur, Chhattisgarh
5. Sanjay Pathak, S/o Late Shri R.P. Pathak, aged about 44 years, Occupation Service, Presently working as Executive Engineer, E/M, L.M., TW & Gate Division, Sakri, Bilaspur, R/o Near Deshbandhu Press, Jarabhata, Bilaspur, Chhattisgarh
6. P.K. Paul, SDO, E&M, R/R, Water Resources Department, Behind Kali Mata Mandir, Raipur, District Raipur, Chhattisgarh
7. D.S. Dandotia, S/o Rameshwar Prasad Dandotia, aged about 56 years, R/o 27 Kholi, Bilaspur, P.S. Civil Lines, District Bilaspur, Chhattisgarh

--- Respondents

For Petitioner

Shri Anup Mazumdar, Advocate

For Respondent/State

Shri Rajnish Singh Baghel, Dy. Adv.
General

Hon'ble Shri Prashant Kumar Mishra, J.
Hon'ble Shri Sanjay Agrawal, J.

Order on Board

By

Prashant Kumar Mishra, J.

17-9-2019

1. WPS No.6479 of 2014 was preferred by one D.S. Dandotia challenging the action of the State Government under which he was not promoted to the post of Assistant Engineer w.e.f. 13-1-2006 with a prayer that his non-promotion is arbitrary and illegal.
2. The learned Single Judge allowed the writ petition of D.S. Dandotia holding that the order passed by the State Government declaring D.S. Dandotia not entitled to be considered for promotion w.e.f. 13-1-2006 is quashed. No consequential order was passed by the learned Single Judge.
3. The order passed in WPS No.6479 of 2014 was assailed in Writ Appeal by one Sanjay Pathak, who was respondent No.6 in WPS No.6479 of 2014. Said WA No.106 of 2016 was decided on 17-10-2016 modifying the order passed by the learned Single Judge holding thus in paras 12 & 13 :

12. The Learned Single Judge also did not consider the fact that though the Writ Petitioner joined services in the State of Chhattisgarh in the year 2007, he did not file any representation against his juniors till he was promoted in the year 2010. Be that as it may, the fact of the matter is that the Writ Petitioner could not have been promoted in the

State of Chhattisgarh till he actually joined in the State of Chhattisgarh on 13.8.2007. Therefore, the only benefit that can be given to the Writ Petitioner D.S. Dandotia (Respondent No.6 herein) is that the DPC shall consider him for promotion with effect from 13.8.2007, when he joined in the State of Chhattisgarh. The order of the Learned Single Judge shall stand modified to that extent.

13. We are, therefore, of the opinion that the writ appeal has to be and is accordingly allowed and the judgment of the Learned Single Judge is modified and the Respondent No.6 shall be considered for promotion by the DPC only w.e.f. 13.8.2007.

4. The review petitioner is also working in the Water Resources Department and is presently posted as Assistant Engineer. His position is akin to that of D.S. Dandotia, as both of them came to be allocated and joined in the State of Chhattisgarh at a later point of time. The review petitioner joined in the State of Chhattisgarh on 5-2-2008 whereas he has been granted promotion to the post of Assistant Engineer by order dated 9-1-2014 w.e.f. 22-9-2007. Thus, the review petitioner has also been granted the benefit of promotion from the date prior to his joining in the State of Chhattisgarh.
5. In the writ appeal of Sanjay Pathak it has been held that D.S. Dandotia could not have been promoted in the State of Chhattisgarh till he actually joined in the State of Chhattisgarh on 13-8-2007. Exactly similar is the case of the

review petitioner wherein he has been granted promotion in the State of Chhattisgarh from a date when he was actually working in the State of Madhya Pradesh and not in the State of Chhattisgarh.

6. Shri Anup Majumdar, learned counsel appearing for the review petitioner, would contend that the review petitioner was not heard when the observation was made in paras 12 & 13 in WA No.108 of 2016, however, acting on the said order, review petitioner's promotion w.e.f. 22-9-2007 is sought to be cancelled.
7. We have heard Shri Anup Mazumdar, learned counsel for the review petitioner and Shri Rajnish Singh Baghel, learned Dy. Govt. Advocate as to the observation made in paras 12 & 13 of the order passed in WA No.108 of 2016 and we failed to persuade ourselves to take any different view of the matter for the simple reason that an employee or officer who was allocated to the State of Chhattisgarh consequent to which he joined in the State of Chhattisgarh on a particular date, he cannot be allowed promotion from the retrospective date when he was not actually working in the State.
8. If the review petitioner or for that matter D.S. Dandotia, writ petitioner of the previous writ petition are allowed promotion from a date when they were not actually working in the State of Chhattisgarh and were actually working in the State of Madhya Pradesh, such promotion can only be examined by the State of Madhya Pradesh. As a separate State, State of Chhattisgarh is entitled to grant benefit of promotion for the period when the employee was actually working in the State. For any previous period it is the State of Madhya Pradesh,

who will take a decision to promote an employee or officer who was working in that State at the relevant point of time.

9. There is no error apparent on the face of record warranting review of the order passed by the Division Bench in WA No.108 of 2016.
10. In the result, the review petition, *sans substratum*, is liable to be and is hereby dismissed.

Sd/-

(Prashant Kumar Mishra)
Judge

Sd/-

(Sanjay Agrawal)
Judge

Gowri